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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

FRANCIS THOMAS WILLIAMSON,

Defendant and Appellant.

E049223

(Super.Ct.Nos. SWF019879 &
SWF023697)

OPINION

APPEAL from the Superior Court of Riverside County. Carol D. Codrington,
Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant, Francis Thomas Williamson, appeals from the trial court's judgment
finding him in violation of probation and imposing a previously suspended sentence of
six years. As discussed below, we affirm.

SUMMARY OF FACTS AND PROCEDURE

On March 7, 2007, the People charged defendant in case number SWF019879 with offering methamphetamine for sale (Health & Saf. Code, § 11379, subd. (a)), possessing methamphetamine (Health & Saf. Code, § 11378) and driving with a suspended license (Veh. Code, § 14601.1). The People also alleged that defendant had four prior offenses for which he served a prison term under Penal Code section 667.5, subdivision (b): grand theft in 1990 (Pen. Code, § 487, subd. (a)); two counts of possessing a controlled substance in 1993 and 1999 (Health & Saf. Code, § 11377, subd. (a)); and second degree burglary in 2000 (Pen. Code, § 459).

On October 30, 2007, while the above charges were pending, the People charged defendant in case number SWF023697 with unlawfully possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a)). The People also alleged the four prior offenses set forth above, plus an additional offense of possessing a controlled substance in 2004 (Health & Saf. Code, § 11377, subd.(a)), for which he also served a prison term under Penal Code section 667.5, subdivision (b).

On April 9, 2008, defendant made a conditional plea to the court on both sets of charges and admitted the prior offenses. The trial court accepted defendant's plea, imposed a six-year suspended sentence and placed him on three years of formal probation. Defendant was also to complete drug treatment at his own expense and pay fees and restitution.

On April 2, 2009, sheriff's deputies conducted a probation search of defendant's residence on State Street in San Jacinto. The deputies found a scale and syringe, small

and large plastic bags containing methamphetamine, a glass pipe with residue next to a “pay-owe” sheet in a living room cabinet, and money and another syringe in the only bedroom. The deputies also found a container of prescription medication pills with defendant’s name on it. Defendant’s caretaker was at the residence, as was a man who said he was there to purchase Vicodin from defendant, along with another man.

Defendant’s probation revocation hearing was held on August 19, 2009. A senior probation officer, who was not defendant’s probation officer, testified that on the date of the probation search defendant’s address on file was on Lyon Street in Hemet, not the State Street address where he was found to be living. A sheriff’s deputy then testified about conducting the probation search and what was found. Finally, defendant testified, against the advice of counsel, that he had informed his probation officer of his new address, that he shared the residence with a full-time caretaker who is a distant relative (“his mother is a cousin of my mother’s cousin”), that the methamphetamine and other drug accoutrements were not his, and that he used prescribed Vicodin because of his advanced age (70) and various health ailments.

The court concluded by a preponderance of the evidence that defendant had violated the terms of his probation by: failing to obtain approval of his residence before moving, unlawfully possessing a controlled substance, selling a controlled substance, and associating with non-relatives who have a known substance abuse problem or who are on probation or parole. The court then imposed the six-year suspended sentence. This appeal followed.

DISCUSSION

We appointed counsel to represent defendant on appeal. Appointed counsel on appeal has filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth the facts and procedural history, briefing no specific issues, and requesting this court to conduct an independent review of the record. We offered defendant an opportunity to file a personal supplemental brief.

Defendant filed his supplemental brief on February 19, 2010. In his supplemental brief, defendant argues that his counsel at the probation revocation hearing was ineffective because counsel refused to seek out and present the following evidence at the hearing: 1) testimony from defendant's probation officer and his supervisor that defendant had provided them with his new residence address; 2) that the handwriting on the "pay-owe" sheets was not his; 3) "an authentic independent laboratory analysis of the alleged suspected methamphetamine residue, recovered at time of probation search;" 4) testimony from the man who told the sheriff's deputy that he was present at the residence to purchase Vicodin, to the effect that he did not tell the deputy this; 5) testimony from defendant's resident caretaker that the drugs and paraphernalia were his and that defendant had no knowledge of them; 6) testimony from the third man present during the search to the effect that he was a mere acquaintance and did not associate with defendant regularly; and 7) reports from a pharmacy stating that defendant purchased syringes legally on a regular basis to administer B-12 complex vitamins.

To establish ineffective assistance of counsel, a defendant must show both that his counsel's performance was deficient and that the deficiencies prejudiced his defense.

(*Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 694.) Defendant's claim that he was deprived of effective assistance of counsel cannot be considered in this appeal because defendant does not refer to evidence contained in the record on appeal. (*People v. Jones* (2003) 30 Cal.4th 1084, 1105; *People v. Pope* (1979) 23 Cal.3d 412, 426.) Defendant asserts that his counsel failed to call several witnesses whose testimony is not in the record and present documentary evidence that is not in the record. Absent a showing on the record, we find no constitutional violation. (*Strickland, supra*, 466 U.S. at pp. 668, 698.) Because there is no evidence in the record demonstrating how the witnesses would have testified and what the requested documentation would have shown, there is no showing that counsel was ineffective for failing to present this evidence.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P.J.

We concur:

HOLLENHORST
J.
KING
J.